

Wisconsin Legislative Council Staff

***WISCONSIN'S OPEN RECORDS LAW AND
OTHER STATUTES RELATING TO THE
DISCLOSURE OF PUBLIC RECORDS***

Staff Brief 96-7



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INTRODUCTION

This Staff Brief was prepared as background information for the Joint Legislative Council's Special Committee on Information Brokering, Computer Technology and Related Issues. The Special Committee was established and appointed by a July 19, 1996 mail ballot and directed to study: (1) electronic access to and dissemination of state government data and information through the use of third party providers or other means, such as the Internet; (2) associated issues, including protection of personal privacy, open records policy and copyright of state publications; and (3) potential changes in state law necessitated by the use of computer technology as a means of accessing, developing, communicating and disseminating information by or between private parties, including the need for (a) development of statutory terminology and (b) modification of civil and criminal regulatory law.

The Staff Brief is divided into the following parts:

Part I describes Wisconsin's Open Records Law and selected statutes relating to the collection and use of data containing personally identifiable information.

Part II contains a table identifying statutes that authorize or require confidential treatment of public records.

*This Staff Brief was prepared by William Ford, Senior Staff Attorney, Legislative Council Staff.

PART I

WISCONSIN'S OPEN RECORDS LAW AND STATUTES RELATING TO THE COLLECTION AND USE OF DATA CONTAINING PERSONALLY IDENTIFIABLE INFORMATION

A. INTRODUCTION

This Part of the Staff Brief describes Wisconsin's Open Records Law and selected statutes relating to the collection and use of data containing personally identifiable information. In addition, two instances in which the statutes require a state agency to compile records and make them available for sale are described.

B. OPEN RECORDS LAW

Wisconsin's Open Records Law establishes procedures for designating legal custodians of government records and regulates inspection and copying of those records. The Open Records Law is based on a strong presumption in favor of public access to state and local government records; this presumption applies whether or not the information in the record contains personally identifiable information.

Wisconsin's basic law pertaining to custody and public inspection of governmental records goes back a number of decades. In 1982, this law was substantially revised and the current Open Records Law, created by Ch. 335, Laws of 1981, took effect on January 1, 1983. Among other things, the 1982 revisions: created a new declaration of policy which, in part, echoed prior case law; created new definitions to clarify the scope of the law; and codified various pre-1982 court opinions which stated circumstances under which a custodian of governmental records could deny access to the records.

1. Declaration of Policy

The "Declaration of Policy" to the Open Records Law establishes the following state policies:

a. In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be the public policy of this state that all persons are entitled to the "greatest possible information regarding the affairs of government and the official acts" of the officers and employees who represent them.

b. Providing persons with such information is declared to be an "essential function" of a representative government and an "integral part of the routine duties" of officers and employees who are responsible for providing such information.

c. The Open Records Law is to be construed in every instance with a “presumption of complete public access, consistent with the conduct of governmental business.” Denial of public access “generally is contrary to the public interests, and only in an exceptional case may access be denied.”

[s. 19.31, Stats.]

2. Scope

The Open Records Law includes: (a) a definition of “authority,” to specify and describe the governmental entities whose records are subject to examination and copying; and (b) a definition of “record,” to specify and describe the types of items that are subject to examination and copying.

“Authority” is broadly defined to mean any of the following state, local or corporate bodies having custody of a “record”:

. . . a state or local office, elected official, agency, board, commission, committee, council, department or public body corporate and politic created by constitution, law, ordinance, rule or order; a governmental or quasi-governmental corporation except for the Bradley center sports and entertainment corporation; a local exposition district under subch. II of ch. 229; any public purpose corporation, as defined in s. 181.79 (1); any court of law; the assembly or senate; a nonprofit corporation which receives more than 50% of its funds from a county or a municipality, as defined in s. 59.001 (3), and which provides services related to public health or safety to the county or municipality; a nonprofit corporation operating the Olympic ice training center under s. 42.11 (3); or a formally constituted subunit of any of the foregoing. [s. 19.32 (1), Stats.]

“Record” is broadly defined to mean:

. . . any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by an authority. “Record” includes, but is not limited to, handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes (including computer tapes), computer printouts and optical disks. [s. 19.32 (2), Stats.]

See Section 5. a., below, for a list of items specifically excluded from the definition of “record.”

3. Notice of Records; Office Hours and Location of Access

Each authority must adopt, prominently display and make available for inspection and copying at its offices, a notice containing: (a) a description of its organization; (b) the established times and places at which, the methods whereby and the legal custodian from whom the public may obtain information and inspect or copy records; and (c) the costs of obtaining copies. This notice requirement does not apply to members of the Legislature or to members of any local governing body. [s. 19.34 (1), Stats.]

An authority must provide access to its records as follows, depending upon the authority's office hours and the location of the records:

a. If the authority maintains regular office hours at the location where the records are kept, access must be provided during the established office hours.

b. If the authority does not maintain regular office hours at the location where the records are kept, the authority must either: (1) permit access upon at least 48 hours written or oral notice of intent to inspect or copy a record; or (2) establish a period of at least two consecutive hours per week during which access is permitted. Under the second alternative, the authority may require 24 hours advance written or oral notice of intent to inspect a record. Any authority imposing a notice requirement under either of these alternatives must include a statement of that requirement in the notice described under the first paragraph of this section.

c. If a record is occasionally taken to a location other than the location where the records are regularly kept and the record may be inspected at the place where the authority's records are regularly kept upon one business day's notice, the authority need not provide access to the record at the occasional location.

[s. 19.34 (2), Stats.]

4. Right to Access

Except as otherwise provided by law, **any person** has the right to inspect **any record** in the custody of any authority. No request may be refused because the requester is unwilling to be identified or to state the purpose of the request. However, the requester must comply with any specific regulations or restrictions which are prescribed by law upon access to or use of information from particular records. No request may be refused because it is received by mail, unless the payment of a fee is required. A requester may be required to show acceptable identification if the record is kept at a private residence or whenever security reasons or federal law or regulations require identification. [s. 19.35 (1) (a), (i) and (j), Stats.] In addition, incarcerated persons are generally denied access to public records except to those records that contain specific references to the incarcerated person or his or her minor children. [s. 19.32 (1) (c), Stats.]

The Open Records Law regulates the form of a request as follows:

- a. A request is deemed sufficient if it “reasonably describes” a requested record or requested information.
- b. A request for a record without a reasonable limitation as to subject matter or length of time represented by the record is not a sufficient request.
- c. A request may be made orally, but a request must be in writing before action to enforce the request may be commenced.

[s. 19.35 (1) (h), Stats.]

Any requester has the right to make or receive a copy of a written record, an audiotape recording or a videotape recording. The person has a right to have a record which is not in a readily comprehensive form reduced to written form on paper. If a record is in a form that does not permit copying, the requester may make, or have the custodian of the record make, a photograph of the record. [s. 19.35 (1) (a) to (f), Stats.]

A legal custodian may impose reasonable restrictions on the manner of access to an original copy if a record is irreplaceable or easily damaged. [s. 19.35 (1) (k), Stats.]

The Open Records Law does not require an authority, in response to a request, to create a new record by extracting information from existing records and compiling the information in a new format. [s. 19.35 (1) (L), Stats.]

An authority must make available for examination and copying any record that is produced or collected under a contract between the authority and a person other than the authority to the same extent as if the record were maintained by the authority. [s. 19.36 (3), Stats.]

5. Exceptions to Access

The Open Records Law contains the following three types of exemptions:

- a. Exemptions which are expressly set forth in the Open Records Law.
- b. Exemptions based on exemptions to the Open Meetings Law.
- c. Common law exemptions.

If a record contains information that may be made public and information that may not be made public, the authority is required to provide the information that may be made public and delete the information that may not be made public from the record before its release. [s. 19.36 (6), Stats.]

a. Exemptions Expressly Set Forth in the Open Records Law

The following records are exempt from the Open Records Law as a result of being explicitly excluded from the definition of “record”:

(1) Drafts, notes, preliminary computations and like materials prepared for the originator’s personal use or prepared by the originator in the name of a person for whom the originator is working.

(2) Materials which are purely the personal property of the custodian and have no relation to his or her office.

(3) Materials to which access is limited by copyright, patent or bequest.

(4) Published materials in the possession of an authority, other than a public library, which are available for sale or which are available for inspection at a public library.

[s. 19.32 (2), Stats.]

In addition to item (4), above, the Open Records Law separately (and somewhat repetitively) states that its inspection and copying rights do not apply to a record which has been or will be promptly published with copies offered for sale or distribution. [s. 19.35 (1) (g), Stats.]

The Open Records Law also states that a record is exempt from its access requirements if any of the following apply:

(1) The record is specifically exempted from disclosure by state or federal law or the authority is authorized by state law to exempt it from disclosure.

(2) The record relates to investigative information obtained for law enforcement purposes and federal law or regulations require, or require as a condition of receipt of aids by the state, that the record be withheld from public access.

(3) The record is a computer program. However, the material used as input for a computer program or the material produced as a product of the program is subject to the general right of examination and copying unless another exemption to the Open Records Law is applicable.

(4) The record is a trade secret. An authority may withhold access to any record or portion of a record containing information qualifying as a trade secret. [s. 19.36 (1), (2), (4) and (5), Stats.]

(5) The record would identify a law enforcement informant. An authority may withhold access to any record or portion of a record that contains specific information which, if disclosed, would identify a law enforcement informant. [ss. 19.35 (1) (em) and 19.36 (8), Stats.]

(6) The record contains plans or specifications for a state-owned or leased building, structure or facility or a proposed state-owned or leased building, facility or structure, except as the Department of Administration specifies by administrative rule.

b. Exemptions From the Open Meetings Law

The Open Records Law provides that the exemptions to the Open Meetings Law's general requirement that governmental bodies meet in open sessions are indicative of public policy and may be used as ***grounds for denying public access to a record***, but only if the authority or legal custodian makes a ***specific demonstration*** that there is a need to restrict public access ***at the time*** the request to inspect or copy the record is made. [s. 19.35 (1) (a), Stats.]

Under the Open Meetings Law, closed sessions of governmental bodies may be held for the following purposes:

(1) Deliberations concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body.

(2) Consideration of, or taking formal action on, specified personnel or licensing matters, including: dismissal, demotion, licensing or discipline of any public employee or person licensed by a board or commission; the investigation of charges against an employee or licensee; or the grant or denial of tenure to a University of Wisconsin System faculty member. An open meeting must be held if the person who is the subject of the hearing requests that it be open.

(3) Consideration of employment, promotion, compensation or performance evaluation data of any public employee.

(4) Consideration of specific applications for probation or parole.

(5) Consideration of strategy for crime detection and prevention.

(6) Conducting specified types of public business whenever competitive or bargaining reasons require a closed session.

(7) Deliberations by the Council on Unemployment Compensation or the Council on Worker's Compensation in a meeting at which all employer members of the Council or all employee members of the Council are excluded.

(8) Deliberations of the Burial Site Preservation Board if the location of a burial site is a subject of the deliberation and discussing the location in public would be likely to result in disturbance of the burial site.

(9) Consideration of financial, medical, social or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons, except where the person requests an open meeting, which if

disclosed in public, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such histories or data or involved in such problems or investigations.

(10) Conferring with the governmental body's legal counsel concerning strategy to be adopted with respect to litigation with which the body is, or is likely to become, involved.

(11) Consideration of requests for confidential written advice from the State Ethics Board or a local ethics board.

(12) Considerations relating to acts by businesses under the economic adjustment program set forth in s. 560.15, Stats., which, if discussed in public, could adversely affect the business, its employees or former employees.

(13) Consideration of certain financial information relating to the support by a person of a nonprofit corporation operating the state-owned Olympic ice rink if the information is specifically exempt from disclosure under s. 23.37, Stats.

[s. 19.85 (1) (a) to (j), Stats.]

c. Common Law Exemptions

The Open Records Law provides that:

Substantive common law principles construing the right to inspect, copy or receive copies of records shall remain in effect. [s. 19.35 (1) (a), Stats.]

The common law, like the specific provisions of the Open Records Law, generally favors public inspection of public documents and records. However, the common law right to inspect public documents and records is not absolute. There may be situations where the harm done to the public interest by disclosure outweighs the right of a member of the public to have access to particular public records or documents. The situations in which public records may be *withheld*, based on common law principles, have not been specifically listed by the Wisconsin Supreme Court, leaving these matters to a *case-by-case* determination by the record custodian [see the leading case of *State ex rel. Youmans v. Owens*, 28 Wis. 2d 672, 127 N.W.2d 470 (1965)]. However, the Wisconsin Supreme Court has found a right *to inspect* a certain category of public documents, specifically arrest records [see *Newspapers, Inc. v. Breier*, 89 Wis. 2d 417, 279 N.W.2d 179 (1979)].

6. Facilities and Fees

Under the Open Records Law, an authority must provide a requester with facilities comparable to those used by its employees to inspect, copy and abstract a record. However, an authority is not required to purchase or lease photocopying, duplicating, photographic or other

equipment or to provide a separate room for the inspection, copying or abstracting of records. [s. 19.35 (2), Stats.]

An authority may impose fees *not to exceed the actual, necessary and direct costs* of the following:

- a. Copying a record. A higher fee may be charged if specifically established or authorized to be established by law.
- b. Photographing or photographic processing if the form of the record does not permit copying and the authority provides a photograph of the record.
- c. Locating the record, if the cost is \$50 or more.
- d. Mailing or shipping copies or photographs of records.

[s. 19.35 (3) (a) to (d), Stats.]

An authority may waive these fees or provide the records at a reduced fee if it determines that waiver or reduction of the fee is in the public interest. [s. 19.35 (3) (e), Stats.] An authority may require a requester to prepay a fee if the total amount exceeds \$5. [s. 19.35 (3) (f), Stats.]

If another statute specifically authorizes a different fee for a particular record, the agency shall charge that fee rather than the fee authorized by the Open Records Law.

7. Time Period for Response; Denials

The Open Records Law provides that an authority must “as soon as practicable and without delay” either fill a request for a record or notify the requester of the authority’s determination to deny the request, in whole or in part, and the reasons for the denial. If a request is made orally, the authority may deny the request orally, unless a demand for a written statement of the reasons is made by the requester within five days of the oral denial. A denial of a written request must be in writing. A request must be in writing before an action to enforce the request may be commenced. [s. 19.35 (4), Stats.]

No authority may destroy a record after receiving a request for inspection or copying of the record until after the request is granted or until at least 60 days after the date that the request is denied. If an action is commenced to enforce compliance with a request, the requested record may not be destroyed until after the order of the court is issued, the deadline for appealing that order has passed or the order of the appellate court is issued. If the court orders production of any record and the order is not appealed, the requested record may not be destroyed until after the request for inspection or copying is granted. [s. 19.35 (5), Stats.]

8. Enforcement

If an authority withholds a record or delays granting access to all or part of a record after a written request for disclosure is made, the requester may pursue either, or both, of the following methods of enforcement:

a. The requester may bring an action for *mandamus* asking a court to order the release of the record.

b. The requester may, in writing, ask the district attorney of the county where the record is found, or the Attorney General, to bring an action for a *writ of mandamus*.

[s. 19.37 (1), Stats.]

If the requester prevails in an enforcement proceeding, in whole or in substantial part, the court must award reasonable attorneys fees, damages of not less than \$100 and other actual costs to the requester. The costs and fees must be paid by the authority affected, the unit of government of which it is a part, or the unit of government that employs the legal custodian of the records. However, the costs and fees are not the personal liability of any public official. [s. 19.37 (2), Stats.]

If a court finds that an authority or legal custodian has “arbitrarily and capriciously” denied or delayed responding to a request or charged excessive fees, the court may award punitive damages to the requester or impose a forfeiture not to exceed \$1,000, or both. Forfeiture shall be enforced by action on behalf of the state by the Attorney General or by the district attorney of any county where the violation occurs. In forfeiture actions, costs to the state or county may also be recovered. [s. 19.37 (3) and (4), Stats.] Exceptions to these enforcement provisions apply if the requester is an incarcerated person. [ss. 19.37 (1m), (1n) and 19.37 (2) (a), Stats.]

9. Designation of Legal Custodian

a. Elected Officials

The Open Records Law provides that an elected official is the legal custodian of his or her records and the records of his or her office, but the official may designate a staff member as legal custodian. Chairpersons of committees, or the cochairpersons of joint committees, on which elected officials serve are the legal custodians of the committee’s records or may designate other persons as legal custodians of the records. [s. 19.33 (1) to (3), Stats.]

Deputy legal custodians must be appointed, except in the case of members of the Legislature or members of any local governing body. [s. 19.33 (6), Stats.]

No elected official of a legislative body is required to act as or designate a legal custodian for the records of any committee of the body unless the official is the highest ranking

officer or chief administrative officer of the committee or is designated the legal custodian of the committee's records by rule or law. [s. 19.33 (8), Stats.]

No elected official is responsible for the record of any other elected official unless he or she has possession of the record of that other official. [s. 19.35 (6), Stats.]

b. Other

Every other authority must designate, in writing, one or more positions occupied by an officer or employee of the authority or unit of government of which the authority is a part, as its legal custodian. If this designation is not made, the authority's highest ranking officer and the chief administrative officer, if any, are the legal custodians for the authority. Each authority must provide the name of the legal custodian and a description of the nature of his or her duties under the Open Records Law to all of the authority's employees entrusted with records subject to the legal custodian's supervision. Deputy legal custodians also must be appointed. [s. 19.33 (4) and (6), Stats.]

An authority that appoints the members of any other authority may designate a legal custodian for the records of that subordinate body, except that if an authority is attached for administrative purposes to another authority, the authority to which it is attached shall designate the legal custodian. [s. 19.33 (5), Stats.]

10. Interpretations by the Attorney General

Any person may request advice from the Attorney General as to the applicability of the Open Records Law under any circumstances. The Attorney General may, but is not required to, respond to such a request. [s. 19.39, Stats.]

C. SELECTED STATUTES RELATING TO THE COLLECTION AND USE OF DATA CONTAINING PERSONALLY IDENTIFIABLE INFORMATION

1. Introduction

This Section of the Staff Brief discusses selected statutes relating to the collection and use of data that contains personally identifiable information by the State of Wisconsin and local governments. "Personally identifiable information" is defined by statute to mean information that can be associated with a particular individual through one or more identifiers or other information or circumstances. [s. 19.62 (5), Stats.]

2. Revenue From Sale of Data Limited

As was discussed in Part I. B., Wisconsin's Open Records Law limits fees for inspecting and copying records, including electronic records, to the actual, necessary and direct costs of providing the records. In addition, s. 19.71, Stats., provides that a state or local governmental

authority may not sell or rent a record containing an individual's name or address of residence unless specifically authorized by state law. The collection of fees under the Open Records Law is not a sale or rental under this provision. Therefore, state and local government agencies may not make revenue from selling public information unless specifically authorized to do so by law.

3. Notice on State Forms

Section 15.04 (1) (m), Stats., provides that each head of a *state* agency shall see that each form used by the agency to seek information from municipalities, counties or the public contains on the first page of the form or in the instructions for completing the form, a conspicuous notice of the authorization for the form, and whether or not completing the form is voluntary. In addition, the notice must state whether or not any personally identifiable information requested in the form is likely to be used for purposes other than for which it is originally being collected. This provision does not apply to state tax forms.

4. Rights of Persons to Challenge Data

Under s. 19.365, Stats., an individual generally may challenge the accuracy of a record containing personally identifiable information pertaining to the individual that is maintained by the state or a local government if the individual notifies the agency maintaining the record, in writing, of the challenge. After receiving notice of a challenge, the authority must either: (a) concur with the challenge and correct the information; or (b) deny the challenge, notify the individual of the denial and allow the individual to file a concise statement setting forth the reasons for the individual's disagreement with the disputed portion of the record. A state authority that denies a challenge is also required to notify the individual of the reasons for the denial. This statute does not apply to records transferred to the State Historical Society or archival depositories nor to any record pertaining to an individual if a specific state statute or federal law governs challenges to the accuracy of the record.

5. Rules of Conduct and Employee Training

Under s. 19.65, Stats., state and local agencies are required to develop rules of conduct for their employees who are involved in collecting, maintaining, using, providing access to, sharing or archiving personally identifiable information. The agency is required to ensure that employees engaging in these activities know their duties and responsibilities relating to protecting personal privacy and know applicable state and federal laws. In addition, an agency that maintains personally identifiable information that may result in an adverse determination about any individual's rights, benefits or privileges shall, to the greatest extent possible, collect the information directly from the individual or verify the information if it is collected from another person. [s. 19.67, Stats.]

D. DEPARTMENT OF TRANSPORTATION REQUIRED TO COMPILE AND MAKE AVAILABLE FOR SALE MOTOR VEHICLE REGISTRATION AND MOTOR VEHICLE OPERATOR LICENSE RECORDS

This Section of the Staff Brief discusses two statutes which *require* the Department of Transportation (DOT) to compile and make available for sale certain information.

Under s. 341.17, Stats., the DOT is required to periodically compile information on motor vehicle registrations. For automobile registrations under the monthly series system, the list is required to contain the name and address of each registrant, the registration number assigned and other identifying information that DOT considers necessary. For new automobile and truck registration which are required to be compiled by county, the list is required to include the name and address of the owner, the make, body type and identification number of the vehicle and the date of sale.

The DOT is *required* to sell subscriptions to these registration lists and is authorized to sell other registration information. In computing the charge to be made for subscriptions to registration lists and for other registration information, the DOT is required “to determine the costs of compiling the lists and other information and shall fairly apportion the major share of those costs among the subscribers and other purchasers.” [s. 341.17 (6), Stats.]

Under s. 343.23, Stats., the DOT is required to maintain files pertaining to each motor vehicle operating license applicant, all applications denied and the reason for the denial and the name of every licensee whose license has been suspended, revoked or canceled by DOT and the reason for such action. In addition, the DOT is required to maintain a file for each motor vehicle licensee containing the application for a license, a record of convictions, the status of the licensee’s authorization to operate different types of vehicles and a record of any reportable accident in which the licensee was involved. Under s. 343.24, Stats., the DOT is required to furnish any person an abstract of the operating record of any person. The department is required to charge \$3 for each file search or computerized search, \$4 for each search requested by telephone or an established monthly service rate determined by the department.

Under ss. 341.17 and 343.325, Stats., any person may require the DOT to withhold information which contains the name, street address, post office box number or zip code of that person from any person who requests motor vehicle registration or operator license information pertaining to 10 or more persons.

PART II

STATUTES AUTHORIZING OR REQUIRING CONFIDENTIAL TREATMENT OF RECORDS

There is no Wisconsin statute of general application authorizing or requiring confidential treatment of state or local government records containing personally identifiable information. Instead, there are numerous statutes which authorize or require confidential treatment of specific types of records, some of which contain personally identifiable information.

The table in this part of the Staff Brief: (a) lists statutes authorizing or requiring confidential treatment of state and local government records; (b) identifies the legal custodian of those records; and (c) gives a brief description of the type of information contained in the record.

A few things should be noted about the table:

c. The table was prepared primarily by conducting “key word” searches of the computerized database of the Wisconsin statutes. However, the statutes which authorize or require confidential treatment of public records do not use consistent terminology so it is almost certain that all of the relevant statutes have not been identified.

d. The middle column in the table may not describe all of the entities who have possession and are custodians of the records. In some cases, the statute may apply to many entities, so the description has been consolidated for the sake of clarity and brevity.

e. The description of records in the right-hand column of the table is very brief and general. This description is not intended to be an accurate reflection of the scope of the statutes. The statutes include a wide variety of methods for establishing the confidentiality of records. Some statutes require confidentiality only if the person submitting the record requests confidentiality or if a court orders confidentiality. Other statutes establishing confidentiality requirements also create exceptions to those requirements or allow access to the records by specified classes of people or government agencies. A few of the statutes require confidentiality only for a limited period of time. Some of the statutes allow an individual to inspect and make corrections in a record pertaining to the individual.

f. The statutes have been organized under major headings such as “A. Medical and Related” and “B. Families.” This required subjective judgments and some statutes listed under one heading could just as logically be listed under a different heading.

<i>TOPIC/STATUTE</i>	<i>CUSTODIAN</i>	<i>RECORD</i>
<u>A. MEDICAL AND RELATED</u>		
s. 47.02 (7) (a)	Department of Health and Family Services (DHFS) and service providers	Information concerning any person who applies for vocational rehabilitation.
s. 49.498	Nursing facilities	Residents' personal and clinical records.
s. 50.03 (2) (e)	DHFS	Information from inspections of community-based residential facilities and nursing homes relating to residents of the facilities or the identity of informants who provided information on a condition of confidentiality.
s. 50.09 (1) (f) 3.	Nursing homes	Health care and personal records of nursing home residents.
ss. 51.30 and 51.61 (1) (n)	DHFS, county agencies, treatment facilities and courts	Mental health, developmental disabilities, alcoholism or drug dependence treatment records.
s. 51.45	Alcoholism treatment facilities	Alcoholism treatment and treatment registration records.
s. 55.06 (17)	County	Protective placement, evaluation, treatment and service records.
s. 69.186 (2)	DHFS	Reports on induced abortions.
s. 118.25 (2) (c)	Public school boards	Physicians' reports on results of tuberculosis examinations of school employees.
s. 120.15 (2) (e)	Public schools	Employee medical records related to insurance claims.
s. 143.07 (7)	DHFS	Records concerning sexually transmitted diseases.
ss. 146.022 (3) and 146.025 (5) and (6)	DHFS	Acquired immunodeficiency syndrome and human immunodeficiency virus test results.
s. 146.0255 (4)	Hospital employees and physicians	Results of tests of infants for controlled substance.
s. 146.50 (12)	Emergency medical services and ambulance service providers	Records relating to emergency care, handling and transportation of sick, disabled or injured persons.
s. 146.82	Health care providers	Patient health care records.
s. 153.50	Office of Health Care Information and DHFS	Patient-identifiable health care data.
s. 253.07 (3) (c)	Family planning agencies	Information gathered by the agency, entity or person conducting programs in family planning.
s. 253.13 (4)	State Laboratory of Hygiene, DHFS and physicians	Blood tests for congenital disorders.
s. 255.04 (3)	DHFS	Identity of subjects of reports concerning persons diagnosed as having cancer.
s. 343.16 (5) (c)	Department of Transportation (DOT)	Information related to incompetency, physical or mental disability, disease or other condition provided by applicants for driver's licenses.

TOPIC/STATUTE	CUSTODIAN	RECORD
s. 655.27 (4) (b)	Insurance Commissioner	Claims information in audits of the Patients Compensation Fund.
s. 655.275 (8)	Patients Compensation Fund Peer Review Council	Patient health care records.
s. 655.58 (4)	Medical malpractice mediation panels	Patient health care records.
s. 880.33 (6)	Courts	Records relating to incompetency and the appointment of a guardian.
s. 891.40 (1)	DHFS, courts and physicians	Records relating to artificial insemination and husband's consent.
ss. 961.335 (7) and 961.54	Department of Justice (DOJ) and the Controlled Substances Board	Names of individuals who are subjects of controlled substances research.
<u>B. FAMILIES</u>		
ss. 46.25 (2m) and 49.22 (4)	DHFS and county agencies	Information obtained by the state location service to establish paternity and enforce child and spousal support obligations.
s. 46.90 (6) (b)	Counties and other investigating agencies	Reports and investigation records of suspected elder abuse or neglect.
s. 48.432 (4) (f) and (g)	County departments or licensed child welfare agencies	Medical or genetic information about a person whose parent's rights have been terminated or who has been adopted.
s. 48.33 (5)	Courts and county agencies	Identification of foster parents.
s. 48.433	County departments and licensed child welfare agencies	Identifying information about birth parents.
s. 48.93 (1d)	Courts	Adoption records.
ss. 49.01 (5) and 49.81 (3)	DHFS	Records of recipients of public assistance.
s. 49.45 (4)	DHFS and county agencies	Information concerning applicants for and recipients of Medical Assistance.
s. 49.83 (1m)	DHFS, county agencies and courts	Information concerning applicants for and recipients of relief funded by a relief block grant, Aid to Families with Dependent Children, Wisconsin Works, social services, child and spousal support, establishment of paternity services or supplemental payments.
s. 69.20 (2)	State and local registrars of vital statistics	Information on a birth certificate, marriage document or divorce report designated on the form as being collected for statistical or medical and statistical use only. Also, records of births, after September 30, 1907, to unmarried mothers.
s. 767.27 (3) (a)	Courts	Information regarding family assets disclosed in any action affecting the family.
s. 767.53	Courts	Records relating to paternity hearings.
s. 853.09	Registrars in probate	Wills deposited with the registrar in probate during the life of the testator.

<i>TOPIC/STATUTE</i>	<i>CUSTODIAN</i>	<i>RECORD</i>
<u>C. CHILDREN</u>		
ss. 48.293 and 48.396	Police officers and courts	Peace officers' and courts' records of juveniles.
s. 48.78	DHFS, Department of Corrections (DOC), county agencies, child welfare agencies, day care centers and maternity hospitals	Records of juveniles in the care or custody of the agency or institution.
s. 48.981 (7)	DHFS, county departments and other persons	Reports, notices and records on abused or neglected children.
s. 115.343 (1)	Public schools	Information related to the identity of pupils participating in the Morning Milk Program.
s. 118.125	Public schools	Pupil records.
s. 118.126 (1)	Specified public school personnel	Information about pupil alcohol or other drug use.
ss. 125.07 (4) (cm), 343.24 (3) and 343.30 (6)	DOT	Information concerning revocation of an underage person's driver's license for a violation of the alcohol beverage laws or any person's driver's license for a violation of the drug laws.
s. 343.30 (5)	DOT	Information concerning the revocation of a juvenile's driver's license.
<u>D. EMPLOYMENT</u>		
ss. 19.46 (2) and 19.55 (2)	Ethics Board	Records related to requests for advisory opinions or an investigation by the board and statements of economic interest filed by Investment Board employees who are not officials who are required to file.
s. 19.59 (3) (d)	Local government ethics boards	Records related to the boards' opinions, opinion requests and investigations of ethics ordinance violations.
s. 40.07 (1)	Department of Employee Trust Funds (DETF)	Individual personal information.
s. 101.055 (7)	Employers	Records of work-related injuries and illnesses and employee exposures to toxic materials and harmful physical agents, to the extent that such records are patient health care records.
s. 102.33	Department of Workforce Development (DWD)	Records related to the administration of worker's compensation.
s. 108.14 (7)	DWD	Unemployment compensation records.
s. 111.375 (1)	DWD and Personnel Commission	Identity of person filing employment discrimination complaint.
s. 230.13	Secretary of Department of Employment Relations (DER) and Administrator of the Division of Merit Recruitment and Selection, DER	Personnel matters.

TOPIC/STATUTE	CUSTODIAN	RECORD
s. 230.45 (1) (h)	Personnel Commission	Confidential records of the Secretary of DER or the Administrator of the Division of Merit Recruitment and Selection, DER, received in connection with discrimination complaints.
s. 230.82 (4)	Any state governmental unit	Identity of employee who reports a violation of law, mismanagement, abuse of authority, waste of public funds or danger to public health in state government ("whistleblower").
<u>E. BUSINESS</u>		
s. 16.75 (2m) (f)	Department of Administration (DOA)	Information from competitive proposals that would reveal the terms of a proposal.
s. 29.38 (9)	Department of Natural Resources (DNR)	Information about the value or weight of clams bought or sold or the location where the clams were taken, killed or collected by commercial clam shellers, helpers and buyers.
s. 29.547 (9) (g)	DNR	Ginseng dry root transaction information from wild ginseng harvest and dealer license records.
s. 66.29 (2)	State and local units of government	Contents of bidders' proof of financial responsibility for public works projects.
s. 66.75 (3)	Cities, villages and towns	Financial records related to room tax receipts.
s. 93.50 (2) (e)	Mediators and arbitrators (selected by the Farm Mediation and Arbitration Board)	Records obtained under the Farm Mediation and Arbitration Program.
s. 93.50 (6) (a)	Department of Agriculture, Trade and Consumer Protection (DATCP)	Records related to cultivated ginseng dry root.
s. 94.64 (5)	DATCP	Information related to fertilizer sales tonnage which would divulge the operations of any person.
s. 94.68 (6)	DATCP	Pesticide trade secret information.
s. 94.70 (3) (b)	DATCP	Pesticide formulas.
s. 94.72 (12)	DATCP	Commercial feed sales reports.
s. 95.232	DATCP	Owners of livestock herds infected or suspected of being infected with paratuberculosis.
s. 96.20 (5)	Commodities marketing boards	Business information of producers and handlers of agricultural commodities.
s. 97.20 (3m)	DATCP	Information that identifies individual milk producers who deliver milk to a dairy plant.
s. 97.22 (10)	DATCP	Information related to individual milk producer production, milk fat and other component tests and quality records.
s. 100.03 (5) (f)	DATCP	Farm products contractors' financial statements.
s. 100.06 (1g) (c)	DATCP	Dairy plant financial and operations statements.
s. 100.235 (7)	DATCP	Vegetable processor information in reports related to unfair trade practices investigations.

TOPIC/STATUTE	CUSTODIAN	RECORD
s. 100.39 (5) (d)	DATCP	Information from books, records or reports of the Potato Industry Board.
s. 101.09 (3) (b)	Department of Commerce	Owner and location of noncommercial flammable or combustible liquid storage tanks.
s. 101.592	Department of Commerce	Trade secrets of manufacturer or supplier of toxic substances or infectious agents.
s. 107.15 (4) (f)	State Geologist	Mineral exploration data and samples.
s. 127.06 (7)	DATCP	Warehouse keepers' financial statements and disclosures of grain purchases.
s. 133.13 (2)	Courts	Business or trade secret information provided in an antitrust investigation.
s. 134.90 (5)	Courts	Trade secrets involved in legal actions to protect a trade secret.
146.60 (6)	DNR and DATCP	Information related to genetically engineered organisms.
s. 157.62 (2) (c)	Department of Regulation and Licensing (DRL)	Records relating to accountings of trust funds contained in annual reports filed by cemetery authorities.
ss. 196.14 and 196.795 (9)	Public Service Commission (PSC)	Public utility and public utility holding company competitive information.
s. 227.46 (7)	State hearing examiners	Trade secret information provided in any administrative hearing under ch. 227, Stats.
ss. 283.55 (2) (c) and 283.43 (2)	DNR	Information, other than effluent data, contained in point source pollutant discharge permit applications.
s. 285.70 (2)	DNR	Air pollution data containing business information.
s. 289.09 (2) (a) and (b)	DNR	Solid waste data containing business information.
s. 291.15 (2)	DNR	Hazardous waste records revealing business information.
s. 293.47 (3)	DNR	Metallic mineral prospecting data relating to economic or geologic information.
s. 299.11 (7) (b) 3.	DNR	Laboratory testing methodologies.
s. 299.55 (2)	DNR	Used oil records revealing business information.
s. 440.92 (6) (d)	DRL	Information on trust funds contained in reports filed by individuals who sell or solicit the sale of cemetery merchandise or undeveloped space ("preneed sellers") under a "preneed" sale contract.
s. 560.15 (4) and (5)	Department of Commerce, community response committees and city, village or town officers and employees	Records related to the Economic Adjustment Program.
<u>F. TAXES</u>		
s. 70.35 (3)	Tax assessors	Personal property tax returns.

TOPIC/STATUTE	CUSTODIAN	RECORD
s. 71.10 (3) (c)	Department of Revenue (DOR)	Names of persons making contributions to the Election Campaign Fund by designation on their income tax returns.
s. 71.78 (1)	DOR	Information derived from income, franchise, withholding, fiduciary, partnership or gift tax information.
s. 72.06	DOR	Information derived from inheritance or estate tax returns or related documents.
s. 76.30 (1)	DOR	Information from public utility tax returns.
ss. 77.23 (2) and 77.265 (2)	County registrars of deeds	Real estate transfer fee returns.
s. 77.61 (5)	DOR	Information from sales and use tax records.
s. 78.80 (3)	DOR	Information on motor, general aviation and special fuel tax return or related documents.
s. 139.11 (4)	DOR	Information from alcohol beverage tax returns or related documents.
s. 139.38 (6)	DOR	Information from cigarette tax returns or related documents.
s. 139.82 (6)	DOR	Information from tobacco tax returns or related documents.
s. 139.91	DOR	Information obtained in administering the tax on controlled substances.
<u>G. FINANCIAL INSTITUTIONS AND INSURANCE</u>		
s. 34.03	Division of Banking	Information obtained from public depositories or the trustees of segregated trusts.
s. 186.235	Office of Credit Unions and members of the Credit Union Review Board	Information obtained during examinations or from other state or federal agencies which regulate financial institutions, mortgage bankers, insurance or securities.
s. 215.02 (6) (a)	Division of Savings and Loan and members of the Savings and Loan Review Board	Information obtained during examinations.
s. 220.06	Division of Banking and members of the Banking Review Board	Information obtained during the course of examinations.
s. 224.74 (2) (b)	DRL	Mortgage bankers' or loan solicitors' examination reports and related correspondence.
s. 617.25 (2)	Insurance Commissioner	Reports of illegal dividend payments by insurers.
s. 645.24 (3)	Insurance Commissioner and courts	Records of summary proceedings relating to insurers' rehabilitation and liquidation.
s. 646.12 (2) (e) and (f)	Board of the Insurance Security Fund	Records relating to the possible insolvency of an insurer and specific rehabilitation and liquidation discussions and proceedings.

<i>TOPIC/STATUTE</i>	<i>CUSTODIAN</i>	<i>RECORD</i>
<u>H. LAW ENFORCEMENT AND COURTS</u>		
s. 23.38 (2)	DNR	Identity of informants of violations of the fish and game laws.
s. 165.55 (8)	State Fire Marshal	Records of arson investigations.
s. 304.06 (1) (f)	DOC	Mailing addresses of crime victims and their families notified when an inmate applies for parole.
s. 304.10 (3)	Judges, district attorneys and governor	Addresses of victims or victims' family members contained in statements or other papers accompanying a pardon application.
s. 767.19 (1)	Courts	Court records or evidence impounded by special order of the court.
s. 905.09	Federal or state government or subdivisions thereof	Law enforcement investigatory files, reports and returns.
s. 905.10	Federal or state government or subdivisions thereof	Identity of informants who furnish information about violations of the law to law enforcement officers or to members or staff of legislative committees which are conducting investigations.
s. 946.16	DOJ and hearing examiners	Records or reports of proceedings under the program of awards to victims of crimes.
s. 968.26	Courts	Records and testimony in John Doe proceedings.
s. 971.16 (2)	Courts	Psychiatric examinations of defendants.
s. 972.15 (4)	Courts	Presentence investigation reports.
s. 977.09	State Public Defender	Files relating to the handling of any case.
s. 979.08 (7)	Courts and court commissioners	Records of secret inquest proceedings.

<i>TOPIC/STATUTE</i>	<i>CUSTODIAN</i>	<i>RECORD</i>
<u>GOVERNMENT OPERATIONS</u>		
s. 13.91 (intro.)	Legislative Council Staff	Research and drafting requests.
s. 13.92 (1) (c)	Legislative Reference Bureau	Drafting records of unintroduced legislation.
s. 13.94 (intro.)	Legislative Audit Bureau	Any audit currently being performed.
s. 13.95 (intro.)	Legislative Fiscal Bureau	Research requests.
s. 16.57 (3)	University of Wisconsin Board of Regents staff	Research requests from Board of Regents.
ss. 16.61 (13) (d) and 19.21 (5) (d)	State Historical Society	State and local government records which were confidential while in the possession of the original custodian.
s. 16.851	DOA	Plans or specifications for state-owned buildings, structures or facilities.
s. 16.955 (2)	DOA	Information related to an “energy alert” ordered by the governor due to a disruption of energy supplies furnished by fuel producers, importers or sellers.
s. 17.025 (3) (b)	Disability Board	Files and records of proceedings held to determine whether, due to disability or inability, a temporary vacancy exists in the office of a state constitutional officer.
s. 20.912 (3m)	State Treasurer	State checks or drafts not paid within one year.
s. 177.23	State Treasurer	Information related to unclaimed property.
s. 757.93 (1)	Judicial Commission	Information related to judicial misconduct or disability investigations.
<u>J. MISCELLANEOUS</u>		
s. 23.27 (3) (b)	DNR	Natural heritage inventory.
s. 30.67 (4)	DNR	Boat accident reports.
s. 42.115 (2)	Nonprofit corporation operating an ice rink which is owned by the state.	Information related to persons providing financial assistance to the corporation.
s. 43.30	Libraries supported, in whole or in part, by public funds.	Records indicating which of the libraries’ documents or other materials have been loaned to or used by an identifiable individual.
s. 44.02 (23)	State Historical Society	Archaeological site information.
s. 45.36 (2) to (4) and (5m)	Department of Veterans Affairs and county veterans’ service offices	Separation documents; records and papers received from the U.S. Veteran’s administration; reports of investigations; materials which reveal investigatory techniques or the identity of confidential informants; materials received in confidence; and personally identifiable information pertaining to applications for benefits.
s. 85.24 (4)	Entities administering ride-sharing programs.	Information pertaining to applicants for ride-sharing services.

<i>TOPIC/STATUTE</i>	<i>CUSTODIAN</i>	<i>RECORD</i>
s. 157.70 (2) (a) and (5) (c) 1.	Burial Sites Preservation Board and hearing examiners	Burial sites information.
s. 234.265 (1)	Wisconsin Housing and Economic Development Authority (WHEDA)	Records relating to pending grants, economic development loans or housing projects, as necessary to protect the competitive nature of the grant, loan or project.
s. 234.265 (2)	WHEDA	Personal or financial information provided by persons seeking certain grants, loans, financial assistance or the investment of funds or by a person in which WHEDA has invested.
s. 349.19	Cities, villages, towns or counties	Motor vehicle accident reports required by ordinance.
s. 905.03	Lawyers	Lawyer-client communications.
s. 905.04	Physicians, nurses, chiropractors and psychologists	Medical practitioners-client privilege.
s. 940.22 (4)	DRL, examining boards, district attorneys and others	Reports of sexual contact by therapists.
s. 942.06 (2)	All persons.	Fact that another person has taken and results of polygraph, voice stress analysis, psychological stress evaluation or other test purporting to test honesty.

WF:kjf:lah:ksm:rjl;ksm;kjf